Supreme Court U.S.
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No. 01 - 1788

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES DORSETT

Petitioner,

v.

LOUISIANA TECH UNIVERSITY, RICHARD GREECHIE, BARRY KURTZ, BARRY BENEDICT, KENNETH REA AND DANIEL RENEAU, LESLIE GUICE, EUGENE CALLENS, AND RUTH ELLEN HANNA, in their individual and official capacities

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF OF RESPONDENTS

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REPLY BRIEF

Within the defendants' BRIEF IN OPPOSITION, the defendants could not exhibit, in any manner, a rebuttal to plaintiff's argument that Magistrate Judge Hayes' Ruling concerning plaintiff's FIRST AMENDMENT rights, which was supported by both the District Judge and the Fifth Circuit Court Of Appeals, was equivalent to the statement that a governmental employee in the area of education has no protection from the First Amendment of the United States Constitution. Thus, plaintiff's argument that Magistrate Judge Hayes' ruling is equivalent to the statement that a governmental employee in the area of education has no protection from the First Amendment of the United States Constitution is uncontested by the defendants in this case. In addition, as documented within the defendants' Memorandum In Support Of Motion For Summary Judgment, the defendants did not agree with Magistrate Judge Hayes', the District Judge's, and the Fifth Circuit Court of Appeals' ruling, which, according to 42 USC section 1983, vetoed the First Amendment of the United States Constitution. Within section B., paragraph one, page 11 of the Memorandum In Support Of Motion For Summary Judgment, the defendants' state:

> "For plaintiff to establish a prima facie case of First Amendment retaliation, he must establish that the speech could be "fairly characterized as involving matters of public concern," and that the speech was "at least a "substantial" or "motivating" factor" in the adverse action taken by the employer."

Thus the defendants like the plaintiff believe that the ruling by Magistrate Judge Hayes and supported by both the District Judge and the Fifth Circuit Court Of Appeals was an error in the law. Hence there is a compelling reason for granting the petition for a writ of certiorari in this case as required by Rule 10 of the Supreme Court Rules.

As documented above, the defendants recognized serious problems with Magistrate Judge Hayes' and the District Judges' ruling concerning plaintiff's First Amendment claims. However, they were confronted with the same dilemma as Magistrate Judge Hayes; the facts of the case as documented by plaintiff established plaintiff's First Amendment claims as valid claims. As a result, within the Fifth Circuit Court Of Appeals and their BRIEF IN OPPOSITION, the defendants abandoned their arguments, statement of facts, and cited legal criteria used to support their Motion For Summary Judgment concerning plaintiff's First Amendment claims. In their place, the defendants attempted to mend the serious problems within Magistrate Judge Hayes' Ruling with the never before stated, totally undocumented statement: "It is not disputed that the only "deprivations" suffered by Dr. Dorsett are the lack of merit raises, lack of summer employment and lack of overload assignments.," before using exactly the same argument as Magistrate Judge Hayes within her Ruling.

As in the defendants' BRIEF IN OPPOSITION, within the Fifth Circuit Of Appeals the defendants' stated:

> "..., Dr. Dorsett filed this action on February 3, 1998 claiming due process violations and defamation. On July 2, 1999, Dr. Dorsett amended this complaint adding First Amendment violations and adding Fourth and Fifteenth amendment due process violations. Lastly, on September 22, 2000, Dr. Dorsett amended his complaint again adding additional alleged violations."

As was established by plaintiff in the Fifth Circuit Court Of Appeals, the above statement is erroneous. As an example, plaintiff February 3, 1998 petition, as document by the petition itself, did include the First Amendment and First Amendment violation claims. However, even using their stated facts, it was plaintiff's

claim and belief that he was deprived his First Amendment rights, his due process rights, and his legal right not to be defamed. Hence, the only way the defendants' statement above could be true would be for the defendants to include within their acknowledged lack of merit raises, lack of summer employment and lack of overload assignments plaintiff's claims and beliefs that he was deprived his First Amendment rights, his due process rights, and his legal right not to be defamed. However, using the above statement as truth, the defendants presented arguments to the Fifth Circuit Court Of Appeals in which they concluded that plaintiff had not been deprived his First Amendment rights, his due process rights, or his legal right not to be defamed, which from above established their statement to be false. Thus, with the knowledge of the Fifth Circuit Court Of Appeals, the defense presented the Fifth Circuit Court Of Appeals by the defendants to defend their actions and the actions of the District Court was contradictory and, as a result, should have been rejected. However, without even a comment, the Fifth Circuit Court Of Appeals supported the defense of the defendants.

As indicated above, within the Fifth Circuit Court Of Appeals, the defendants ended their arguments with the conclusion that their above given statement is false. Thus, by their own admission, the most the defendants could truthfully say is that it is not disputed that included within the actions by the defendants against plaintiff are denial of merit raises, summer employment, and overload assignments and their argument concerning plaintiff's First Amendment claims is reduced to exactly the argument by Magistrate Judge Hayes, which by the defendants' own actions and words, as exhibited above, left them with no defense against plaintiff's First Amendment claims. Plaintiff made the Fifth Circuit Court aware of the above information, but the Fifth Circuit Court Of Appeals supported the actions of the defendants and the District Court without any comment on the matter.

What the defendants did within the Fifth Circuit Court Of Appeals they have now done within the Supreme Court Of The United States. To defend their actions and the actions of the District Court and the Fifth Circuit Court Of Appeals, the defendants have presented a totally contradictory argument, which by their own actions and words has left them with no defense against plaintiff's First Amendment claims. Thus there are additional compelling reasons for granting plaintiff's petition for a writ of certiorari.

Even though the defendants in no way rebutted plaintiff's many facts documenting that his previous suit was not a precedent for the current suit, as indicated above, the defendants continued to use plaintiff's previous suit as a precedent, which, by way of Magistrate Judge Hayes' argument concerning plaintiff's First Amendment claims, led to the following statement within the defendants' Brief In Opposition Summary OF The Argument on page 4:

> "1. Dr. Dorsett suffered no constitutional deprivation by being denied merit raises, summer employment, and overload assignments. Therefore, the lower courts were correct in not considering the issue of whether or not he was speaking on issues of public concern."

As a result the defendants in no way rebutted any of plaintiff's many claims of speech involving matters of public concern. As an example, plaintiff's claim that his speech as the private citizen budgetary editor of the Communitas was on matters of public concern was uncontested by the defendants within their Brief In Opposition. In addition, plaintiff's claim that his speech as private citizen editor of the Communitas did not adversely affect the public service for which Tech is charged was uncontested, plaintiff's claim that President Reneau acted under color of the law with his two September 25, 1995 letters to plaintiff concerning plaintiff's speech as the private citizen editor of the Communitas was uncontested, and plaintiff's claim

that President Reneau's two September 25, 1995 letters were the only justification at the vice-president level of the grievance for denying plaintiff a merit raise was uncontested. Hence, without contest by the defendants, by 42 USC section 1983, plaintiff's First Amendment rights were violated by the defendants' actions in this suit as claimed by plaintiff. The above cited, uncontested violation of plaintiff's First Amendment rights is only one of many such violations.

As above, there are other statements made by the defendants within their Brief In Opposition that are documented by Court documents to be erroneous. One such statement is the following statement concerning plaintiff's earlier arguments:

> "In his arguments, Dr. Dorsett fails to address relevant legal issues, and instead makes unsubstantiated allegations against the respondents. Dr. Dorsett submitted no affidavits or deposition testimony to support his many allegations. There is only his unilateral account of events."

As in earlier arguments concerning due process violations, in their Brief In Opposition, the defendants addressed only property rights. Thus plaintiff's claims of denial of substantive liberty rights were uncontested by the defendants. In addition, their statement concerning Cleveland Board of Education v. Loudermill is incomplete. The complete statement of the standard set in the above case is as follows:

> "A tenured employee who has a property right in his job is entitled to oral or written notice of the charges against him, an explanation of the employee's evidence, and an opportunity to present his side of the story."

In addition, the defendants ignored the standard set in Newman v. Bargin:

> "The court held that even if a university deviates from its procedures, it is not subject to a procedural due process attack so long as the

procedures the university actually followed are fair ones."

As communicated earlier to this Court by plaintiff, at the beginning of the Fall quarter 1996, the Tech engineering, chemistry, physics, and mathematics faculty were told for the first time that they had been evaluated by the engineering administration in a never before used evaluation. Later when plaintiff met with Dr. Kurtz to inquire why he received no merit raise for 1996-1997, he discovered that he had been charged of wrong doing and declared guilty by the engineering administration without even knowing he was being evaluated. Within their Brief In Opposition, the above claim was uncontested. Thus, unlike what the defendants stated in their Brief In Opposition, plaintiff was not always informed and given an opportunity to respond and the defendants' argument is based on erroneous statements.

Within the meeting Dr. Kurtz told plaintiff that a letter written by President Reneau was used to justify plaintiff's lack of a merit raise, but refused to explain or discuss in any manner the letter written by President Reneau. At every level of the administration and the grievance procedure, plaintiff was denied any explanation or discussion of the letter written by President Reneau totally denying him the opportunity to make any response concerning President Reneau's letter. Within their Brief In Opposition, the above information concerning President Reneau's letter was uncontested.

In addition, as communicated earlier to this Court, in the Fall, 1996, plaintiff documented that a secret personnel file had been maintained and used by the defendants to harm him. In their Brief In Opposition the defendants acknowledged plaintiff's claim with no contest of the claim. Thus it is uncontested by the defendants that an unfair and illegal practice was used by the defendants to harm plaintiff.

Plaintiff's claim that as a result of the

defendants' action against him in 1996-1997, he was denied his First Amendment and Louisiana open records liberty rights was also uncontested by the defendants. Thus plaintiff was denied substantive liberty rights by the defendants without being afforded process and by Llano v. Berglund, the defendants violated plaintiff's due process. The above, cited, uncontested due process violation is one of many such violations. Likewise, the defendants' statement "Dr. Dorsett was not deprived of due process for lack of a grievance hearing" given in the Summary Of The Argument in the Brief In Opposition is erroneous.

When Dr. Callens failed to respond to plaintiff's 2000 grievance within the required time period, plaintiff requested default judgment from Dean Guice. However, instead of the expected default judgment, Dean Guice abandoned the grievance procedure and established their counsel of record in this suit Craig Henry as judge over the grievance totally denying plaintiff the opportunity to be heard or to receive a decision in the grievance or the opportunity to appeal the grievance. Thus, in an unfair manner plaintiff was denied the opportunity for input or appeal. As a result of the 2000 grievance actions against plaintiff, plaintiff was denied his First Amendment liberty rights, his Louisiana open records liberty rights, his academic freedom liberty rights, and his personnel file management liberty rights. Within their Brief In Opposition, the claims above were uncontested and, by the argument above, the statement made by the defendants is erroneous.

To defend themselves against plaintiff defamation claim, in their Brief In Opposition the defendants put all their eggs in two baskets: 1. Louisiana law is clear that "statements between employees, made within the course and scope of their employment, are not statements communicated or publicized to third persons so as to constitute a publication for defamation purposes." and 2. Further, an employer will have a qualified or conditional

privilege where statements are made in good faith and reasonably thought to be true on a subject matter in which the employer has an interest. However, within this suit, the defamatory letters used to harm plaintiff that did and could exit only in a secret personnel file are not statements made within the course and scope of employment. When Dr. Greechie delivered his secret personnel file September 28, 1995 defamatory letter to plaintiff, he described the letter as a personal communication from him and within the meeting acknowledged that the charges within the letter were false. The deposition of Dr. Halliburton within this suit established that all charges within Dr. Greechie's secret personnel file May 13, 1996 defamatory letter were false. Within the grievance process, Dean Benedict determined that the charges of wrong doing by Dr. Greechie in his secret personnel file defamatory September 28, 1995 letter, his secret personnel file defamatory May 3, 1996 letter, and his secret personnel file defamatory May 13, 1996 letter were false. Thus the defendants' defense falls and plaintiff's argument establishes that the defendants within this suit defamed him.

President Reneau's two secret personnel file defamatory September 25, 1995 letters were written to plaintiff as private citizen editor of the Communitas, which was totally independent of plaintiff's Tech employment. As documented by the letters themselves, within one of the letters President Reneau harmed plaintiff by falsely claiming that the public's open records business was his own personal and private business and in the other by falsely claiming plaintiff had overused the Louisiana open records law as the private citizen budgetary editor of the Communitas. Thus, again the defendants' defense fails. In addition, there are other instances in which the defendants' defense fails.

As always in the past, within their Brief In Opposition, the Court is told by the defendants by proclamation, without even stating a standard, that

there is no genuine issue of fact within this case. Magistrate Judge Hayes did exactly the same thing within her Ruling. If there is no genuine issue of fact within this case as repeatedly proclaimed by the defendants, then either plaintiff's cited standard for a genuine issue of fact is improper or plaintiff's application of the standard is improper. However, as always true, within their Brief In Opposition both plaintiff's stated standard for a genuine issue of fact and his application of the standard are uncontested by the defendants. Thus, unlike what the defendants proclaim to be true, there is a genuine issue of fact in this suit and, by Federal Rule 56 (c), the District Court and the Fifth Circuit Court Of Appeals erred in their decisions.

Within their Brief In Opposition the defendants state:

> "However, due to the many letters of reprimand and poor overall performance, the respondents would have reached the same decision absent the alleged protected conduct."

However, such is not the truth.

As exhibited above, the only charges used by the defendants in 1996 to deny plaintiff a merit raise were the three secret personnel file, defamatory, retaliatory letters written by Dr. Greechie and the two secret personnel file, defamatory, retaliatory letters written by President Reneau. As documented by court documents and by the defendants in this case, and uncontested by the defendants in their Brief In Opposition, within plaintiff's annual evaluations from 1999-2000 to the present, to judge plaintiff a bad teacher, the defendants used nonexistent observations, nonexistent complaints by faculty and students, and invalid, deflated student-teacher evaluation numbers used in an arbitrary and capricious manner to harm plaintiff. Within plaintiff's 1999-2000 and 2000-2001 annual evaluations, in addition to the charges above, the defendants added the grade distribution of only one of plaintiff's many

classes. For both years plaintiff was the only mathematics and statistics faculty member for whom grade distributions were used in the annual evaluation and for both years the defendants used the grade distributions in an arbitrary and capricious manner to harm plaintiff.

From 1999-2000 to the present, to judge plaintiff's badly under research, the defendants, in an arbitrary and capricious manner to harm plaintiff, used an action which by Tech's Handbook is an antithesis of academic freedom.

Almost all of the letters of reprimand, which did not begin until the Fall, 1998, concerned the nepotism and ethics violations with the employment of Dr. Hanna's daughter within mathematics and the administrative role played by Dr. Hanna within mathematics and statistics. As documented by court documents, including annual evaluations, and uncontested by the defendants in their Brief In Opposition, Dr. Hanna is manager of Tech's undergraduate mathematics and statistics program serving as administrative contact person for mathematics and statistics and is the only mathematics and statistics faculty member charged with scheduling. As a result, the many letters of reprimand concerning the nepotism and ethics violations with the employment of Dr. Hanna's daughter in mathematics and the administrative role played by Dr. Hanna in mathematics and statistics are based on false charges and from 1999-2000 to the present plaintiff's service within plaintiff's annual evaluations has been judged bad using only false charges. Likewise the remaining charges within the letters of reprimand are erroneous.

Thus there are many compelling reasons for granting plaintiff's petition for a writ of certiorari and plaintiff prays that this Court will end the continued brutal, illegal assault on his career and health by the defendants in this case.